



1545 Crabapple Lane, Plainfield, NJ 07060 (201) 320-2006 www.voicenj.com

February 15, 2010

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

re: Petition to Deny Renewal of Station License of WWOR-TV
File No. BRCT-20070201AJT and MB Docket No. 07-260

Dear Chairman Genachowski:

Voice for New Jersey (VNJ) wishes to offer its response to a letter to you dated January 5, 2010 from Jared S. Scher, Counsel to Fox Television Stations, Inc. (Fox). This letter (the "Fox letter") contains a number of erroneous assertions that are relevant to the captioned proceeding.

The Fox letter repeats a number of arguments found in Fox's prior filings; these have already been thoroughly addressed in prior submissions by VNJ. The letter also contains a new argument to the effect that the Commission cannot properly consider significant developments that have taken place since the scheduled expiration date of WWOR-TV's existing license. This assertion is incorrect, and Fox's underlying argument is deeply flawed. This is addressed in detail in the accompanying Exhibit A.

Before moving on to these issues, however, we wish to more fully discuss the factual misstatements contained in Fox's recent filings with the Commission, and the circumstances surrounding them.

Background on the Fox Misrepresentations

In our letter and Exhibit to you dated November 27, 2009, Voice for New Jersey took notice of recent *ex parte* filings submitted by Fox that contained significant misrepresentations concerning the levels of news programming, public affairs programming, and staffing currently in place at WWOR-TV. These issues are at the very core of VNJ's petition to deny renewal of the WWOR-TV station license, and are obviously of great significance to the captioned proceeding.

In its filings, Fox stated that WWOR-TV offers eight hours of news and public affairs programming each week, and that the station employs approximately 250 people at its Secaucus headquarters. As set forth in our previous letter to you, these statements are patently false.

In July, 2009, WWOR-TV reduced its news and public affairs programming to three hours per week-- a reduction of more than 60%. Also in mid-2009, the station undertook dramatic staff reductions. The exact magnitude of these changes were not known to us at the time of our previous letter. We note however, that the Fox letter now claims a staff of only 75 people at WWOR-TV. This would indicate that the station reduced its staffing by more than 2/3.

We advised you that these misrepresentations appeared in two Fox *ex parte* filings recorded on August 26, 2009—well over one month after the programming changes were implemented. We also advised that these misstatements were repeated in Fox's subsequent *ex parte* filings recorded on September 4, 2009 and September 23, 2009.

Documentation Review

Fox states in its January 5 letter (curiously, in a footnote) that VNJ's assertions regarding the two later filings are incorrect. Fox states that it "updated and revised the text of the exhibit to make clear that its representations were intended only to describe the station's performance during the license term in question." (This comment is apparently to be taken in conjunction with Fox's new and novel claim that its license term expired as of June 1, 2007, notwithstanding the fact that its broadcasting has continued uninterrupted).

We must acknowledge that the "Exhibit A" filings recorded on September 4th and September 23rd are slightly different than the two "Exhibit A" documents filed on August 23rd. We did not pick up on these subtle changes when we stated that "the same comments were resubmitted" in our November 27 letter, and we wish to admit our error. We apologize to the Commission and to Fox for this mistake.

For reference, we have attached in the accompanying Exhibit B a copy of the Exhibit as it was originally (twice) filed in August (the "original Exhibits"). The accompanying Exhibit C shows the version of the Exhibit that was filed in September (the "revised Exhibits"). We have highlighted all of the changes incorporated into this later version.

As can be readily seen, the changes to the document consist of:

- the inclusion of the phrase "until the end of its most recent license term" in paragraph 2a;
- the addition of the phrase "of the license term" in paragraph 2a (ii);
- the addition of the phrase "during the license term" in paragraph 6b (ii);

- and a change in verb tense from present to past at certain points throughout sections 2 and 6.

Analysis of the Fox Misrepresentations

In its January 5 letter, Fox urges the Commission to disregard VNJ's assertion that Fox has engaged in significant misrepresentations. It argues that the changes to the original Exhibits were mere "clarifications" to show that its statements related only to its performance prior to the originally scheduled expiration date of its license in June, 2007.

Once again, these exhortations are curiously relegated to a footnote, suggesting that Fox may after all have some semblance of a sense of shame. In any case, Fox's characterization of the statements in the original Exhibits is simply wrong, and its explanation of the changes is wholly unpersuasive.

First, there is no ambiguity in the original Exhibits. These documents plainly state that:

- *"WWOR-TV **currently broadcasts** over 8.0 hours of news and public affairs programming per week...";*
- *'[WWOR-TV]... **currently provides** over 850 minutes of local news over any given two week period";*
- *and "WWOR-TV **currently employs** over 250 individuals in the Secaucus facility..." [emphasis added].*

Nowhere in the original Exhibits is there any suggestion that these assertions are limited to any prior time frame. In fact, the use of the word "currently" plainly indicates the very opposite.

Clearly, the representations made in Fox's original Exhibits are untrue. What is even more telling in evaluating the integrity of Fox's dealings with the Commission is what happened (and didn't happen) next.

Obviously, knowledge of WWOR-TV's programming schedule must be imputed to Fox, and there can be no defense for these misrepresentations. It is conceivable, however, that the individuals who prepared and submitted the filings recorded on August 26th lacked actual knowledge of the station's programming changes.

What is very clear, however, is that these same individuals became aware of the changes-- and the serious misrepresentations contained in the original Exhibit-- only a few days after the fact. The changes contained in the revised Exhibit recorded on September 4th would obviously have arisen only from such actual knowledge.

The misrepresentations reflected in the original Exhibits were made in August, 2009 meetings with eight members of the Commission's Media Bureau and Office of General Counsel. The meetings included the Commission's General Counsel, Deputy General Counsel, and Media Bureau Chief. All eight individuals were provided copies of the original Exhibit.

The appropriate course of conduct for Fox to correct its misrepresentations to the Commission is very clear. Fox could have-- and should have-- acknowledged its error in writing. It could have-- and should have-- made specific reference to the misstatements in its August Exhibit, specifically retracted those statements, and provided the Commission with corrected information.

Instead, Fox chose a course of obfuscation by means of subtle alteration. Rather than openly acknowledge its error, it performed the most minimal revisions possible to limit the timeframe to which the representations apply. It simply submitted the revised Exhibit in its subsequent *ex parte* filings-- and apparently hoped that no one would notice.

There are two glaring problems with Fox's approach. First, the record remains uncorrected. The representations made in the revised Exhibits do not contradict or retract the statements made in the original Exhibits-- in fact they repeat them, but in a limited timeframe.

Second, the revised Exhibit was never supplied to the eight staff members who received the original version. In fact, only two members of the Commission staff attended subsequent meetings and received the revised Exhibit. Fox chose not to provide this revised filing to the Commission's General Counsel, Deputy General Counsel, Media Bureau Chief and five other key staffers.

Summary and Conclusion

Fox's rather casual relationship with the truth has painted it into a corner in this proceeding. Faced with clear evidence that has knowingly misrepresented WWOR-TV's programming in its filings with the Commission, it must now take the somewhat bizarre position that these untruths are irrelevant.

In its letter of January 5 Fox argues that the Commission is barred from considering any developments prior to the scheduled expiration of its broadcast license in June, 2007. The novelty of this position is highlighted in examining Fox's prior submissions, which seem to suggest just the opposite. In the opening paragraph of both the original Exhibit and the revised Exhibit, Fox writes:

*"The outline... highlights WWOR-TV's impressive record of service to the viewers of northern New Jersey - **a service which the station is committed to continuing for the indefinite future.**" [emphasis added]*

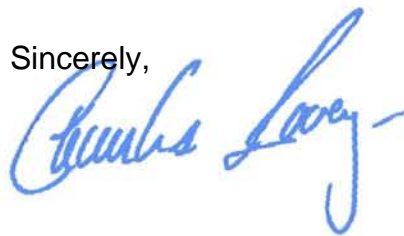
Such a forward-looking declaration is fundamentally at odds with the notion that current practice and future plans are irrelevant with respect to the station's licensing proceeding. It is also difficult to fathom that WWOR-TV could maintain even the minimal service levels that Fox boasts of, having just reduced its news and public affairs programming by more than half and its staffing by over 2/3.

In its January 5 letter, Fox proposes the following standard by which its recent filings should be evaluated:

"...for the FCC to find that Fox has engaged in a misrepresentation, it would have to conclude not only that there was a 'false statement of material fact' but also that a false statement was 'made with an intent to deceive the Commission'."

It is clear that both of these tests are met, and we trust that the Commission has the ability to wade through Fox's contrivances and excuses to focus on these two simple facts.

Sincerely,



Charles Lovey, Member
Voice for New Jersey

copy (via email): Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Atwell Baker
Austin Schlick, FCC
Joseph Palmore, FCC
William Scher, FCC
Marilyn Sonn, FCC
Ajit Pai, FCC
William Lake, FCC
Robert Radcliffe, FCC
Clay Pendarvis, FCC
William Freedman, FCC
Rick Kaplan, FCC
Jared S. Scher, Esq. (via regular mail)

EXHIBIT A

Neither Law nor Precedent Bars the Commission from Considering WWOR-TV's Recent Actions in Evaluating the Renewal of its Station License. The Station's Record Clearly Demonstrates that it has Failed to Meet Its Public Interest Obligations

In its letter of January 5, 2010 to Chairman Julius Genachowski (the "Fox letter"), Fox Television Stations, Inc. ("Fox") argues that the FCC should be precluded from consideration of the station's record of performance since June 1, 2007. This is the date when the station's current license was set to expire. Fox cites two obscure cases to support its position.

A review of these cases, however, shows that they stand for principles that are directly opposite to Fox's arguments. There is nothing in law or in precedent that precludes the Commission's full consideration of recent developments at the station; indeed, the Commission's obligation to insure that the public interest is served compels such scrutiny.

The balance of the Fox letter largely repeats a number of erroneous arguments that were originally voiced in Fox's Opposition to Voice for New Jersey's Petition to Deny, and that have been thoroughly rebutted in Voice for New Jersey's Reply to Opposition.

- 1) The proposition that the FCC is barred from consideration of developments beyond the originally scheduled term of the WWOR-TV broadcast license is completely inconsistent with Fox's prior filings in this proceeding.
 - a) Prior to its January 5 letter, Fox had never even suggested that developments beyond the originally scheduled license term were barred from consideration by the Commission. Indeed, a review of Fox's prior filings would lead to just the opposite conclusion.
 - b) Fox's filings, even those filed more than two years after the scheduled expiration of WWOR-TV's broadcast license, consistently make reference to WWOR-TV's programming schedule, its staffing, and its service levels in the present tense.
 - c) Right up to the time of its January 5 letter, Fox continued to offer forward-looking statements about WWOR-TV in its filings, clearly in the belief that its current activities and future plans were relevant consideration in the station's license proceeding.
 - d) It is only now, after painting itself into a corner with its serious misrepresentations concerning WWOR-TV's programming, that Fox has contrived its argument concerning the supposed expiration of WWOR-TV's license. While this argument is easily dismissed, it is probable that Fox sees it as the company's best chance to avoid

the consequences of both the draconian programming and staffing cuts which it has imposed at WWOR-TV, and the serious misrepresentations that it has made to the Commission.

- 2) The proposition that the FCC is barred from consideration of developments beyond the originally scheduled term of the WWOR-TV broadcast license has no basis in fact. The WWOR-TV license term has not expired; it has been extended by means of the station's ongoing operation under "Continuing Operating Authority" status.

- a) WWOR-TV's current license was issued prior to the station's acquisition by Fox in 2001. Notwithstanding the scheduled expiration date of this license as of June, 2007, WWOR-TV has continued to broadcast without interruption. This ongoing operation under "Continuing Operating Authority" status can only be construed as an extension of the term of the existing license.
- b) Even with its vital interests at stake, Fox fails to make a straightforward representation that the WWOR-TV license has expired. In its January 5 letter, Fox cites Section 309(k) of the Communications Act, and argues that:

"... the Commission should reject VNJ's attempt to introduce into this proceeding evidence about WWOR-TV's performance since the expiration of its license term."

However, with respect to the actual date that the license would be deemed to have expired, Fox proposes:

*"... June 1, 2007 – the date upon which WWOR-TV's preceding license term **was set to expire.**" [emphasis added]*

Fox and its Counsel are surely well aware that the date when something is "set to" occur and the date when it actually occurs are two vastly different things. Fox's dismissive treatment of this issue notwithstanding, the simple fact that the station has continued to broadcast, uninterrupted, would strongly argue that no license expiration has occurred.

- 3) The two obscure cases from which Fox selectively quotes are entirely distinguishable from the WWOR-TV license proceeding.
- a) Indeed, *Birbach Broadcasting Corp.*, 16 FCC2d 1515, 1520 (2001) stands for the opposite principle for which it is cited. That case involved a station which was off the air at the time its renewal application was filed, and the issue presented was whether the staff properly renewed the license when the station did not resume programming until after the end of the license term. The Commission concluded that, notwithstanding the fact that it was basing its renewal in part on post-license term conduct (*i.e.*, the

resumption of programming), renewal was appropriate under the circumstances. That process - considering post-license term conduct - is precisely what Fox says the Commission cannot do here.

- b) *K Licensee, Inc.*, 23 FCCRcd 7824, 7827 (2008) is also inapposite, and the language Fox uses in describing it is self-servingly hyperbolic. Fox says that “[T]he FCC consistently has refused to evaluate a licensee’s or station’s actions that occur ‘outside the license term for which the renewal application was filed.’” Its only case listed is *K Licensee, Inc.*, and the citation is not signaled by “see, e.g.,” or any other indication that there is even one more case which stands for the claimed proposition. Moreover, the decision is a staff decision, not a decision of the Commission. Thus, even if the case were properly cited, there is thus no basis for saying “the FCC” has ever so held, much less that the Commission has ever done do “consistently.”
- c) More fundamentally and more importantly, *K Licensee, Inc.* does not stand for what Fox claims it does. In that case, the staff granted renewal for the term which began on June 2, 1999 and ended on June 1, 2007. A petition to deny was filed pertaining to conduct of the prior licensee which took place in 1995. The staff rejected this assertion. The relevant passage states in full that”

“Rodriquez also argues that K Licensee falsely certified that there were no violations of FCC rules during the preceding license term, knowing “it failed to properly construct WEBR-CA.” Again, there is no evidence that K Licensee was involved in the construction of WEBR-LP in 1995, and more importantly, such construction took place outside the license term for which the renewal application was filed.”

Id., 23 FCCRcd at 7827. Thus, the reference to acts which took place “outside the license term” is to conduct of an earlier licensee which took place before, not after, the license term in question. Although the decision does not so state, it is also clearly relevant that the 1999 license renewal was not challenged, and was final.

- d) There is, in short, no precedent which supports Fox’s extraordinary claim that its recent programming practices, and its misrepresentations about them, are irrelevant to its application for renewal.
- 4) Even if Fox could support its position that the WWOR-TV license has expired, --which it cannot-- the result would have little practical effect. VNJ’s Petition to Deny sets forth a compelling *prima facie* case that renewal of the WWOR-TV broadcast license should be denied based on the station’s performance over the originally scheduled eight year term of its license. Accordingly, no new information to support VNJ’s position is required.

- a) Even if the Commission were to find that WWOR-TV's performance was sufficient to merit only lesser sanctions, however, the result of such a determination would-- as a practical matter-- render Fox's "license expiration" argument moot.
 - b) The issues raised in VNJ's Petition to Deny led the Commission to hold a rare public hearing to review the license renewal. This hearing took place in Newark, NJ on November 28, 2007, and was attended by Commissioner Copps and former Commissioner Adelstein.
 - c) The results of this hearing were discussed in testimony at a Congressional Oversight Hearing on December 13, 2007. Commissioners Copps and Adelstein both expressed their concerns regarding the quality of service provided by WWOR. At this same hearing, former Chairman Martin testified that, at minimum, the renewal of WWOR's station license would likely be granted for a period significantly less than the typical eight years, and should be subject to sanctions and reporting requirements to insure that the station fulfills its public interest obligations.
 - d) These comments suggest that, at best, the WWOR-TV license might be renewed for only a two or three year period. Although the Commission has yet to act in this matter, such a renewal would still be entirely within the Commission's purview and would be well supported by the facts relevant to this proceeding.
 - e) Such a short term renewal would mean that WWOR-TV would almost immediately be required to apply for another renewal of its broadcast license. With this new application, all of the station's programming cuts and staffing cuts (along with Fox's misrepresentations about them) would obviously be open for consideration.
 - f) With all of Fox's arguments over law and precedent in this matter found lacking, it is advisable for the Commission to consider the full scope of WWOR-TV's recent conduct in this proceeding as a matter of practical expediency.
- 5) Neither Fox's failed critique of VNJ's Petition to Deny, nor its rote assertion of first amendment rights, can either excuse or deny WWOR-TV's ongoing failure to meet its public interest obligations. In its January 5 letter, Fox repeats a number of assertions first raised in its Opposition to VNJ's Petition to Deny. Fox's arguments are deeply flawed, and have been comprehensively rebutted in VNJ's Reply to Opposition. Because these issues have already been thoroughly addressed, we will only briefly respond here.
- a) The Fox letter again takes issue with the scope of WWOR-TV's obligations to its community of license.

- i) Fox first disputed this issue in its Opposition, where it denied that any special obligation exists.
- ii) VNJ thoroughly rebutted Fox's position in its Reply to Opposition, where it noted:

The Opposition alleges that the Petition is based on a flawed legal standard applicable to WWOR-TV's license renewal process. These assertions are themselves flawed, in that the Opposition quotes only part of a sentence from RKO General, Inc., 1 FCCRcd 1081, 1087 (1986) to rebut Petitioner's showing that WWOR-TV has a special obligation to meet the needs of New Jersey citizens. The portion of the passage as quoted by WWOR-TV states that the licensee's "obligation to serve the issues and concerns of northern New Jersey is not different in kind or degree from any licensee's obligation to serve its community of license,"

Significantly, and misleadingly, Fox did not follow the ordinary custom of indicating omission by use of ellipses. In fact, the quoted passage was directed to stressing that the petitioner in that case did not discuss the shortcomings of WWOR-TV's issues/program list. The passage reads in full as follows:

Given that [the licensee's] obligation to serve the issues and concerns of northern New Jersey is not different in kind or degree from any licensee's obligation to serve its community of license, **except to the extent of geographical coverage encompassed in the area where issues and concerns are to be served, we rely here as in other cases on the issues/programs list.** *Id.* [emphases added]

Plainly, the quoted language supports VNJ's view as set forth in the Petition. First, it underscores that WWOR-TV does indeed have a special duty to the "geographical coverage encompassed in the area where issues and concerns are to be served..." And second, it validates Petition's showing which does specifically and at length discuss the shortcomings of WWOR-TV's issues/program lists.

- iii) In its January 5 letter, we see that Fox has finally (if minimally and begrudgingly) begun to acknowledge WWOR-TV's responsibilities to its Grade B coverage area. The station's ongoing failure to meet this obligation has been thoroughly documented by VNJ in our Petition to Deny, Reply to Opposition, and in our letter and exhibit of November 27, 2009.

b) The January 5 letter again erroneously asserts WWOR-TV's First Amendment protections to excuse the station's ongoing failure to properly serve its community of license. It would appear that Fox is unwilling to recognize that its right of free speech cannot be used to circumvent its stations' public interest obligations.

i) This issue was thoroughly addressed in VNJ's Reply to Opposition:

VNJ clearly understands that WWOR's tone or approach to any given news story, or its failure to carry any given news story, are matters of journalistic discretion and are properly outside the Commission's purview. However, the First Amendment was never designed to protect a broadcaster that clearly fails to meet its public service obligations. WWOR-TV's failure to provide anything more than a nominal level of coverage in its community of license is not a matter of "editorial choice", but of management indifference, and carries with it no first amendment protections.

As set forth in the Petition and its exhibits, WWOR-TV's record of news coverage in some of the largest population centers in its Northern New Jersey community of license is atrocious. In the five quarterly Issues and Programming Reports analyzed by VNJ, a total of 999 news stories were reported. Of these, nearly half (481 stories) related primarily to New York City or New York State—areas outside WWOR-TV's community of license, and areas already having arguably the highest levels of dedicated media coverage in the nation.

By way of contrast, the City of Elizabeth is squarely within WWOR's Northern New Jersey community of license and has a population of 120,000. WWOR-TV reported only two news stories relating to Elizabeth during the five quarters analyzed.

Edison Township and the City of Patterson are also within WWOR-TV's community of license, and have populations of 98,000 and 149,000 people, respectively. WWOR-TV covered only four news stories in Edison, and eight news stories in Patterson during the five quarters analyzed.

It is clear that WWOR cannot explain away this horrific record of local coverage with casual assertions of "editorial choice" and first amendment protections. This lack of coverage plainly indicates a conscious choice by WWOR's management to ignore its obligations to its community of

license, and to align itself with the larger, more glamorous, and potentially more lucrative New York market.

- ii) As one would expect (given Fox's debilitating cuts to WWOR-TV's news programming schedule and staffing levels) the situation has hardly improved since the passage above was written in 2007.
 - iii) In VNJ's letter of November 27, 2009, we briefly summarized a review of WWOR-TV's issues and programming reports covering 10/01/08 to 09/30/09. VNJ's analysis revealed that the station broadcast a total of five news stories covering the municipalities of Elizabeth, Patterson, Woodbridge and Edison in this 12-month period. These are four of the six largest municipalities in WWOR-TV's northern New Jersey service area, each having populations of 100,000 – 150,000 people. The station's issues and programming reports also showed NO news stories covering local (i.e. non-gubernatorial) New Jersey elections in the most recent election cycle.
- c) Finally, the Fox letter repeats the ridiculous assertion that "VNJ did not make any attempt to evaluate WWOR-TV's *overall* level of performance."
- i) This argument first appeared in Fox's Opposition, in the service of a strategy to narrowly define and segregate the three analyses that formed the basis of the VNJ petition.
 - ii) This notion fails utterly. As VNJ stated in its Reply to Opposition:

Fox inaccurately characterizes the issues raised in the Petition as relating to three narrowly defined criticisms: that WWOR-TV failed to provide adequate coverage during the final 30 days of the 2005 elections; that the station's 2006-2007 Issues and Program lists reflect an inadequate quantity of news coverage, and that WWOR-TV's newscasts contained too few New Jersey stories during a 12 day period in April, 2007. Much of the subsequent verbiage in the Opposition is then spent dissecting the supporting data and setting forth discretely parsed arguments targeted at these narrowly interpreted issues.

In fact, the Petition makes clear that there are not three narrow arguments supporting the denial of WWOR-TV's license renewal, with each discrete argument supported by a limited collection of data. There is in fact one overriding issue: WWOR-TV has consistently failed to provide adequate news coverage of New Jersey issues, and has failed to provide adequate local news coverage in its Northern New Jersey community of license. All of the

studies and analyses cited in the Petition, as well as the supplemental data and anecdotal information set forth combine to provide a clear and compelling picture of WWOR's failures in this regard.

The elements supporting this contention are set forth specifically and at length in the Petition and need not be repeated here. Some of Fox's assertions in the Opposition, however, do merit specific comment.

Fox states that "the Petitioners never allege—as they must to make a prima facie case—that Fox has failed in its overall programming to serve New Jersey viewers throughout the last six and one-half years." Fox is incorrect in this assertion. With respect to coverage of New Jersey issues and local news coverage in the community of license, this is specifically what is alleged in the Petition. Again, VNJ has reviewed and relied on WWOR-TV's own Issues and Programming Reports to support its conclusions. While Fox clearly takes exception to this reliance, Fox also fails to provide ANY supplemental information that would suggest that the information contained in the Issues and Programming reports is in any substantive way incorrect, incomplete, or unreliable.

- 6) Fox seeks to have the Commission disregard WWOR-TV's massive staffing cuts, as well as VNJ's observations relating to the station's maintenance of its public files. These issues, however, all relate to the station's failure to meet its public interest obligations, and go to the heart of its recent misrepresentations to the Commission.
 - a) In response to Fox's complaint regarding the lack of a declaration to support the comments relating to the station's staffing cuts contained in VNJ's November 27 letter, we attach as Exhibit D the Declaration of Charles Lovey, a member of Voice for New Jersey. This Declaration supports all of the allegations in VNJ's November 27 letter.
 - b) Fox seeks to minimize the importance of VNJ's assertions with regard to WWOR-TV's staffing cuts by stating that they are put forth in "entirely vague terms." As the station's staffing is not a matter of public record and is not known to VNJ, we have indeed relied on certain anecdotal evidence. It would appear, however, that any ambiguity has accrued to WWOR-TV's benefit.
 - i) In VNJ's November 27 letter, we advised the commission that "WWOR's production staff was reportedly slashed by more than 50%."

We appear to have understated the magnitude of the staffing reduction.

- ii) In filings with the Commission as recent as the Exhibit recorded on August 29, 2009 (attached hereto as Exhibit B) Fox boasts that “WWOR-TV currently employs over 250 individuals at the Secaucus facility.” In its January 5 letter, however, we are told only that the number of staff in New Jersey is “more than 75.” Assuming that Fox has no reason to understate this number, it would appear that staffing was cut by more than 2/3. If Fox is predisposed to argue once again that this assertion is too vague, we would encourage them to provide the Commission with detailed information about the staffing cuts-- something that they conspicuously failed to do in their January 5 letter.
- c) Even more curious are Fox’s complaints concerning VNJ’s comments about WWOR-TV’s public files. In a tone suggesting that its feelings have been hurt, Fox’s January 5 letter states “Although it does not allege that any viewer comments were in fact missing, VNJ ‘urges’ the Commission to ‘look closely into this matter’”.
- i) For evidence that documentation was in fact missing from WWOR-TV’s public files at the time of VNJ’s inspection, Fox need look no further than the Declaration that accompanied its January 5 letter. In this declaration, of WWOR-TV’s Senior Director of Communications and Public Affairs acknowledges that all of the communication relating to WWOR-TV’s news and public affairs programming changes “had been found misfiled.”
- ii) Upon acknowledging this error, VNJ was told that the station had received only four emails on this subject. Given the magnitude of the programming changes and the size and population density of WWOR-TV’s viewing area, we continue to hold that this minimal level of commentary strains credulity.
- iii) The relevant facts are that WWOR-TV has acknowledged that comments were missing from its public files at the time of VNJ’s inspection; that the station’s management has since acknowledged only a very minimal amount of public comment regarding dramatic changes to its news and public affairs programming schedule; and that the owner of the station has grossly misrepresented the magnitude of this programming in recent filings with the Commission. Given all of this, our suggestion that the Commission “look closely into the matter” seems a model of restraint.

EXHIBIT B

**WWOR-TV: A STRONG COMMITMENT AND RECORD OF SERVICE
TO THE VIEWERS OF NORTHERN NEW JERSEY**

The following outline sets forth the legal standard applicable to the renewal application filed for WWOR-TV, Secaucus, New Jersey ("WWOR-TV"), and clarifies that no special obligations have ever been imposed by the FCC outside of the requirement, adopted in 1983 as to the then licensee, that WWOR-TV's primary service area extended beyond its city of license (the primary service area for all other stations) and encompassed northern New Jersey. The outline then highlights WWOR-TV's impressive record of service to the viewers of northern New Jersey – a service which the station is committed to continuing for the indefinite future. Finally, it demonstrates that Section 309(k) of the Communications Act requires renewal of WWOR-TV's license without special programming conditions.

- 1) No Special Programming Obligation. WWOR-TV's obligation to serve the issues and interests of its community of license, Secaucus, is no different in kind or degree from any broadcaster's obligation to serve its community of license.
 - a) Opposition to WWOR-TV's pending renewal application is premised on a misapprehension of the station's programming obligations. Opponents have attempted to manufacture special programming obligations for WWOR-TV, when in fact the station, at most, has a larger primary service area (northern New Jersey) than other licensees (their community of license).
 - b) WWOR-TV became licensed to Secaucus under unique circumstances. Pursuant to Section 331 of the Communications Act, the Commission in 1983 reallocated WWOR-TV from New York to Secaucus. The enactment of Section 331 enabled the station's then licensee, RKO General, to terminate a pending renewal of license proceeding, avoiding possible loss of license, by agreeing to move the station from New York City to the state of New Jersey. In connection with the reallocation, the Commission observed that RKO General had a primary obligation to serve not only its city of license, but all of northern New Jersey lying within its Grade B contour.¹
 - c) In 1986, the Commission, acting upon an application for consent to assign the station's license to a subsidiary of MCA, considered and rejected arguments that RKO General had assumed a "higher obligation" to be responsive to the issues and concerns of its service area.² The Commission stated that RKO General's higher obligation was one only of the geographic coverage area to which the station was required to be responsive. Unlike other stations, which

¹ *In the Matter of Petition to Reallocate VHF Television Channel 9 from New York, New York to a City Within the Grade B Contour of Station WWOR-TV*, FCC 82-558, 53 Rad. Reg.2d 469 (1983).

² *In re RKO General, Inc.*, 1 FCC Rcd 1081, 1086 (1986).

are required primarily to serve the needs of their “city of license,” RKO General’s primary obligation extended not only to Secaucus, but to all of its Grade B service area encompassing most of northern New Jersey.³

- d) The Commission made clear that RKO General’s “obligation to serve the issues and interests of northern New Jersey is no different in kind or degree from any licensee’s obligation to serve its community of license.”⁴
- e) Most importantly, the Commission’s decision related only to the question of whether RKO General, as seller of the station, had met its obligations as delineated in the decision allocating WWOR-TV to Secaucus and should be permitted to assign the license. As to the programming obligations of the buyer, MCA, the FCC refused a request by the State of New Jersey that it condition approval of the assignment on MCA’s compliance with representations that it had made in the assignment application with respect to service to New Jersey. The FCC indicated that “it is apparent that [MCA] understands its service obligations,” mooted any need for the imposition of a condition.⁵
- f) The FCC again rejected complaints that WWOR-TV had failed to provide sufficient New Jersey programming in its review of a petition to deny WWOR-TV’s spin-off to MCA shareholders in 1990.⁶ In its decision, the Commission determined that the petitioner had failed to demonstrate, based on WWOR-TV’s publicly-available issues/programs list, that the station had ignored New Jersey issues. In granting the consent to the transfer of control, the Commission imposed no conditions with respect to either a New Jersey physical presence requirement or special programming obligation.
- g) In fact, since RKO General’s acceptance of the reallocation of the station’s license to New Jersey in 1983, the Commission has not once imposed any programming condition on the grant of an assignment of license for WWOR-TV or on the grant of its renewal applications. The Commission granted the station’s 1987, 1994 and 1999 renewal applications without imposing any programming conditions. Nor did the Commission impose any special conditions with respect to New Jersey programming in connection with its grant of consent to the transfer of control of the station in 2001 to Fox Television Stations, Inc. (“FTS”) or in the grant of consent in 2006 to the transfer of control of FTS from K. Rupert Murdoch to Fox Entertainment Group. While FTS intends to continue its exemplary service to all of New Jersey within the Grade B contour of WWOR-TV and maintain its presence in

³ *Id.*

⁴ *Id.* at 1087.

⁵ *Id.* at 1090.

⁶ *In re Application of WWOR-TV, Inc. for Transfer of Control of Station WWOR-TV, Channel 9 Secaucus, New Jersey*, FCC 90-424, 6 F.C.C.R. 193 (1990).

the state, it is subject to no unique requirements with respect to service to New Jersey.

2) WWOR-TV Has Provided Exemplary Service to the Residents of Northern New Jersey.

- a) *Daily News.* Since FTS acquired WWOR-TV in 2001, the station has broadcast more than 2000 hours of regularly scheduled newscasts; more than 200 hours of public affairs programming and in the last two years alone, more than 20,000 public service announcements benefiting local charities and residents.
 - i) Nightly News, Seven Days a Week. WWOR-TV's one hour nightly newscasts spend a substantial amount of time covering issues of importance to northern New Jersey viewers, including extensive coverage of elections and local events.
 - ii) News Updates. During the last two years WWOR-TV has increased its news gathering capabilities, adding new staff and enhancing its mobile satellite coverage. As a result, the station had added regularly scheduled local news updates running between 4:00 and 7:00 p.m. weeknights. WWOR-TV also interrupts regularly scheduled programming for breaking news reports of importance to northern New Jersey viewers. Examples of breaking news segments include severe weather warnings, Amber Alerts, and live addresses by the Governor of New Jersey. The station also carries live coverage of the Governor's annual State of the State address.
 - iii) Partnership with the Record. In 2007, the station has also partnered with a local newspaper, *The Record* and Rasmussen, a provider of political data, to enhance its local coverage.
 - iv) News Crawls. WWOR-TV regularly runs news crawls to provide viewers with up-to-date coverage of news developments such as, school closings, major traffic and New Jersey election results.
- b) *Weekly Public Affairs Programming.* WWOR-TV broadcasts weekly half-hour public affairs programs *New Jersey Now* (formerly *Ask Congress*) and *Real Talk*. Each airs for one-half hour on Sundays at noon and 12:30 p.m., respectively. *NJ Now* provides a forum for New Jersey politicians to address issues of importance to New Jersey residents. *Real Talk* presents local social, economic and cultural issues, as well as local personalities, providing viewers access to civic and community leaders. Recently, the station moved the air time for each of these programs from early Sunday morning to Sunday mid-day.

- c) *Local Sports and Entertainment.* WWOR-TV provides a wide variety of entertainment and sports programming, including regular coverage of the New Jersey Nets, New York Giants and New York Yankees sporting events. The station also covers entertainment programs responsive to our diverse audience – for example, each year WWOR-TV brings the community coverage of the National Puerto Rican Day Parade and the MDA Telethon; in 2007 the station began carrying the McDonald's Gospelfest which it also plans to broadcast on a yearly basis. The station also recently broadcast the United Negro College Funds' Tribute to Smokey Robinson.
 - d) *WWOR-TV Is Committed to New Jersey.* The following examples, while not exhaustive, are representative of WWOR-TV's commitment to New Jersey.
 - i) WWOR-TV's Presence in New Jersey. WWOR-TV's main studio is located in a 110,000 square foot office complex in Secaucus, New Jersey. The station has invested nearly \$12 million dollars toward the capital improvement of the facility since 2001.
 - ii) WWOR-TV currently employs over 250 individuals at the Secaucus facility and employees often take part in a variety of events in and around northern New Jersey. For example, several employees work with the New Jersey Task Force on Fire Prevention, Leadership New Jersey and the NJ Mental Health Institute. The station also has partnered with the Community Food Bank of NJ, The New Jersey Center for Performing Arts and the Three Doctors Organization, among others, to help serve the community.
 - iii) Training and Internships. WWOR-TV operates a paid apprentice program to identify qualified individuals for work in the broadcasting field. The program has successfully increased opportunities for minorities and women, which have been underrepresented in the field. The station also provides internship opportunities for college students and supports the Emma Bowen Foundation for Minority Interest in Media, which helps fund a job and career development program, and partners with One Hundred Black Men on a mentoring program.
- 3) The FCC Should Renew WWOR-TV's License Without Conditions.
- a) *Standard for Renewal.* Section 309(k) of the Communications Act, which governs television broadcast license renewals, was adopted as part of the Telecommunications Act of 1996. Section 309(k)(1) requires the Commission to grant a renewal application if specified requirements are satisfied: "If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license –
 - (A) the station has served the public interest, convenience, and necessity;

(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and
 (C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.”⁷

b) *Limited Authority to Deny or Condition a Renewal.* Only if the licensee fails to meet the standard of Section 309(k)(1), may the Commission deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁸

c) *WWOR-TV Has Satisfied the Requirements Section 309(k)(1) for Renewal.* Since there can be no finding of a serious rule violation or rule violations amounting to a pattern of abuse, the FCC must find that WWOR-TV did not serve the public interest in order to impose conditions pursuant to Section 309(k)(2) – a standard that it simply cannot meet. As demonstrated above, WWOR-TV’s license is subject to no express conditions as to its programming to New Jersey. And quite apart from the question of whether it is subject to requirements applicable to no other television station, it is indisputable that WWOR-TV has provided exceptional service to northern New Jersey. Accordingly, imposition of special programming conditions on the grant of WWOR-TV’s pending renewal application would violate Section 309(k)(2) of the Communications Act.

4) Even if the Commission Had the Authority—Which It Does Not—to Impose Conditions on the Grant of WWOR-TV’s License Renewal, the FCC Must, if WWOR-TV Requests, Vacate Any Conditional Grant and Afford WWOR-TV a Full Evidentiary Hearing.

a) Under Section 1.110 of the Commission’s rules, if the FCC grants any application subject to terms or conditions other than those requested by the applicant, the applicant may reject the grant and request an evidentiary hearing before an administrative law judge.⁹ “Upon receipt of such request, the Commission will *vacate* its original action upon the application and set the application for hearing....”¹⁰ The hearing would be a trial-type and include introduction of oral and written testimony with full right of cross-examination.

b) An applicant may then request Commission review of the outcome of the hearing process¹¹ and appeal a final Commission decision imposing conditions to the

⁷ 47 U.S.C. § 309(k)(1).

⁸ 47 U.S.C. § 309(k)(2).

⁹ 47 C.F.R. § 1.110.

¹⁰ *Id.* (emphasis supplied).

¹¹ 47 C.F.R. § 1.115(a).

United States Court of Appeals for the District of Columbia Circuit.¹² An applicant may also seek review of any court of appeals decision by filing a petition for writ of certiorari with the Supreme Court.

5) Subjective Review of a Broadcaster's Editorial Choices Is Not within the Purview of the Commission.

- a) The First Amendment and Section 326 of the Communications Act prohibit the Commission from interfering with broadcasters' free speech rights or improperly interfering with the programming decisions of licensees.¹³
- b) The Supreme Court has recognized the degree to which Congress has directed the Commission to steer clear of oversight of broadcast news—"Congress intended to permit private broadcasting to develop with the widest journalistic freedom," and – since it is not physically possible to provide time for all viewpoints – "the right to exercise editorial judgment was granted to the broadcaster."¹⁴
- c) The Commission itself has stated that, "the general rule is that the Commission [will] not sit to review the broadcaster's news judgment, the quality of his news and public affairs reporting, or his taste."¹⁵

6) The Commission Has No Basis to Make Quantitative Judgments About WWOR-TV's Programming

- a) The Commission long-ago eliminated its quantitative guidelines for non-entertainment, local and informational programming. Prior to its 1984 deregulation order, the Commission maintained renewal application processing guidelines specifying the amount of non-entertainment programming that television stations were required to broadcast to ensure routine processing of their renewal application and avoid additional review.¹⁶

¹² See 47 U.S.C. § 402(b)(2); *Tribune Co. v. FCC*, 133 F.3d 61, 66 (D.C. Cir. 1998) ("[W]hen the Commission grants an application subject to some condition which the applicant did not request, the application has been denied for purposes of § 402(b).").

¹³ See 47 U.S.C. § 326. See also, *In re John Neely, Esq.*, 2007 WL 1246137 (2007) (finding that "the Commission will not take adverse action on a license renewal application based on subjective determination of a listener or group of listeners as to what constitutes appropriate programming").

¹⁴ *Columbia Broadcasting System v. Democratic National Committee, et al.*, 412 U.S. 94, 110-11 (1973).

¹⁵ *In re Complaints Concerning Network Coverage of the Democratic National Convention*, 16 FCC 2d 650, 654 (1969).

¹⁶ *Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations*, 98 FCC 2d 1076 (1984) ("TV Deregulation Order").

The Commission ultimately concluded that the processing guidelines imposed burdensome compliance costs and raised potential First Amendment concerns by unnecessarily infringing on the editorial discretion of broadcasters.¹⁷

- b) FTS has clearly demonstrated that it has provided programming responsive to issues of concern to viewers in northern New Jersey. Moreover, WWOR-TV provides more local news on average than other similarly ranked commercial television stations in the United States and carries more local news and public affairs programming than other full power stations licensed in New Jersey.
 - i) A brief review of the programming of local New Jersey stations' reveals that, on average, WWOR-TV currently broadcasts over 8.0 hours of local news and public affairs programming per week. Other full-power commercial stations licensed in New Jersey broadcast less than 3.0 hours of local news and public affairs programming per week.
 - ii) WWOR-TV carries significantly more news than other similarly situated stations. Nationally, over 60 percent of stations ranked fifth or below in a market provide no local news at all.¹⁸ The FCC's own 2005 study reveals that the remaining 40 percent of stations ranked fifth and below average 458 minutes over a two week period.¹⁹ In contrast, WWOR-TV, which is ranked sixth in the DMA, currently provides over 850 minutes of local news over any given two week period.

¹⁷ *TV Deregulation Order*, at ¶¶ 8, 27.

¹⁸ See 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Order on Reconsideration, MB Docket No. 06-121, FCC 07-216 (Released Feb. 4, 2008), at ¶ 62, n.204 (“Quadrennial Review Order”).

¹⁹ *Quadrennial Review Order*, at ¶ 62, n.204.

EXHIBIT C

**WWOR-TV: A STRONG COMMITMENT AND RECORD OF SERVICE
TO THE VIEWERS OF NORTHERN NEW JERSEY**

The following outline sets forth the legal standard applicable to the renewal application filed for WWOR-TV, Secaucus, New Jersey ("WWOR-TV"), and clarifies that no special obligations have ever been imposed by the FCC outside of the requirement, adopted in 1983 as to the then licensee, that WWOR-TV's primary service area extended beyond its city of license (the primary service area for all other stations) and encompassed northern New Jersey. The outline then highlights WWOR-TV's impressive record of service to the viewers of northern New Jersey – a service which the station is committed to continuing for the indefinite future. Finally, it demonstrates that Section 309(k) of the Communications Act requires renewal of WWOR-TV's license without special programming conditions.

- 1) No Special Programming Obligation. WWOR-TV's obligation to serve the issues and interests of its community of license, Secaucus, is no different in kind or degree from any broadcaster's obligation to serve its community of license.
 - a) Opposition to WWOR-TV's pending renewal application is premised on a misapprehension of the station's programming obligations. Opponents have attempted to manufacture special programming obligations for WWOR-TV, when in fact the station, at most, has a larger primary service area (northern New Jersey) than other licensees (their community of license).
 - b) WWOR-TV became licensed to Secaucus under unique circumstances. Pursuant to Section 331 of the Communications Act, the Commission in 1983 reallocated WWOR-TV from New York to Secaucus. The enactment of Section 331 enabled the station's then licensee, RKO General, to terminate a pending renewal of license proceeding, avoiding possible loss of license, by agreeing to move the station from New York City to the state of New Jersey. In connection with the reallocation, the Commission observed that RKO General had a primary obligation to serve not only its city of license, but all of northern New Jersey lying within its Grade B contour.¹
 - c) In 1986, the Commission, acting upon an application for consent to assign the station's license to a subsidiary of MCA, considered and rejected arguments that RKO General had assumed a "higher obligation" to be responsive to the issues and concerns of its service area.² The Commission stated that RKO General's higher obligation was one only of the geographic coverage area to which the station was required to be responsive. Unlike other stations, which

¹ *In the Matter of Petition to Reallocate VHF Television Channel 9 from New York, New York to a City Within the Grade B Contour of Station WWOR-TV*, FCC 82-558, 53 Rad. Reg.2d 469 (1983).

² *In re RKO General, Inc.*, 1 FCC Rcd 1081, 1086 (1986).

are required primarily to serve the needs of their “city of license,” RKO General’s primary obligation extended not only to Secaucus, but to all of its Grade B service area encompassing most of northern New Jersey.³

- d) The Commission made clear that RKO General’s “obligation to serve the issues and interests of northern New Jersey is no different in kind or degree from any licensee’s obligation to serve its community of license.”⁴
- e) Most importantly, the Commission’s decision related only to the question of whether RKO General, as seller of the station, had met its obligations as delineated in the decision allocating WWOR-TV to Secaucus and should be permitted to assign the license. As to the programming obligations of the buyer, MCA, the FCC refused a request by the State of New Jersey that it condition approval of the assignment on MCA’s compliance with representations that it had made in the assignment application with respect to service to New Jersey. The FCC indicated that “it is apparent that [MCA] understands its service obligations,” mooted any need for the imposition of a condition.⁵
- f) The FCC again rejected complaints that WWOR-TV had failed to provide sufficient New Jersey programming in its review of a petition to deny WWOR-TV’s spin-off to MCA shareholders in 1990.⁶ In its decision, the Commission determined that the petitioner had failed to demonstrate, based on WWOR-TV’s publicly-available issues/programs list, that the station had ignored New Jersey issues. In granting the consent to the transfer of control, the Commission imposed no conditions with respect to either a New Jersey physical presence requirement or special programming obligation.
- g) In fact, since RKO General’s acceptance of the reallocation of the station’s license to New Jersey in 1983, the Commission has not once imposed any programming condition on the grant of an assignment of license for WWOR-TV or on the grant of its renewal applications. The Commission granted the station’s 1987, 1994 and 1999 renewal applications without imposing any programming conditions. Nor did the Commission impose any special conditions with respect to New Jersey programming in connection with its grant of consent to the transfer of control of the station in 2001 to Fox Television Stations, Inc. (“FTS”) or in the grant of consent in 2006 to the transfer of control of FTS from K. Rupert Murdoch to Fox Entertainment Group. While FTS intends to continue its exemplary service to all of New Jersey within the Grade B contour of WWOR-TV and maintain its presence in

³ *Id.*

⁴ *Id.* at 1087.

⁵ *Id.* at 1090.

⁶ *In re Application of WWOR-TV, Inc. for Transfer of Control of Station WWOR-TV, Channel 9 Secaucus, New Jersey*, FCC 90-424, 6 F.C.C.R. 193 (1990).

the state, it is subject to no unique requirements with respect to service to New Jersey.

2) WWOR-TV Has Provided Exemplary Service to the Residents of Northern New Jersey.

- a) *Daily News.* From the time that FTS acquired WWOR-TV in 2001 until the end of its most recent license term, the station broadcast more than 2000 hours of regularly scheduled newscasts; more than 200 hours of public affairs programming and in the last two years of the term alone, more than 20,000 public service announcements benefiting local charities and residents.
 - i) *Nightly News, Seven Days a Week.* WWOR-TV broadcast a one-hour nightly newscast, which spent a substantial amount of time covering issues of importance to northern New Jersey viewers, including extensive coverage of elections and local events.
 - ii) *News Updates.* During the last two years of the license term, WWOR-TV increased its news gathering capabilities, adding new staff and enhancing its mobile satellite coverage. As a result, the station added regularly scheduled local news updates running between 4:00 and 7:00 p.m. weeknights. WWOR-TV also interrupted regularly scheduled programming for breaking news reports of importance to northern New Jersey viewers. Examples of breaking news segments included severe weather warnings, Amber Alerts, and live addresses by the Governor of New Jersey. The station also carried live coverage of the Governor's annual State of the State address.
 - iii) *Partnership with the Record.* In 2007, the station also partnered with a local newspaper, *The Record* and Rasmussen, a provider of political data, to enhance its local coverage.
 - iv) *News Crawls.* WWOR-TV regularly ran news crawls to provide viewers with up-to-date coverage of news developments such as, school closings, major traffic and New Jersey election results.
- b) *Weekly Public Affairs Programming.* WWOR-TV broadcast weekly half-hour public affairs programs *New Jersey Now* (formerly *Ask Congress*) and *Real Talk*. Each aired for one-half hour on Sundays at noon and 12:30 p.m., respectively. *NJ Now* provided a forum for New Jersey politicians to address issues of importance to New Jersey residents. *Real Talk* presented local social, economic and cultural issues, as well as local personalities, providing viewers access to civic and community leaders. The station also moved the air time for each of these programs from early Sunday morning to Sunday mid-day.

c) *Local Sports and Entertainment.* WWOR-TV **provided** a wide variety of entertainment and sports programming, including regular coverage of the New Jersey Nets, New York Giants and New York Yankees sporting events. The station also **covered** entertainment programs responsive to our diverse audience – for example, each year WWOR-TV **brought** the community coverage of the National Puerto Rican Day Parade and the MDA Telethon; in 2007 the station began carrying the McDonald's Gospelfest which it also plans to broadcast on a yearly basis. The station also recently broadcast the United Negro College Funds' Tribute to Smokey Robinson.

d) *WWOR-TV Is Committed to New Jersey.* The following examples, while not exhaustive, are representative of WWOR-TV's commitment to New Jersey.

i) WWOR-TV's Presence in New Jersey. WWOR-TV's main studio is located in a 110,000 square foot office complex in Secaucus, New Jersey. The station has invested nearly \$12 million dollars toward the capital improvement of the facility since 2001.

ii) WWOR-TV **has employed** over 250 individuals at the Secaucus facility and employees often **took** part in a variety of events in and around northern New Jersey. For example, several employees **have worked** with the New Jersey Task Force on Fire Prevention, Leadership New Jersey and the NJ Mental Health Institute. The station also has partnered with the Community Food Bank of NJ, The New Jersey Center for Performing Arts and the Three Doctors Organization, among others, to help serve the community.

iii) Training and Internships. WWOR-TV **has operated** a paid apprentice program to identify qualified individuals for work in the broadcasting field. The program has successfully increased opportunities for minorities and women, which have been underrepresented in the field. The station also **has provided** internship opportunities for college students and supports the Emma Bowen Foundation for Minority Interest in Media, which helps fund a job and career development program, and **has partnered** with One Hundred Black Men on a mentoring program.

3) The FCC Should Renew WWOR-TV's License Without Conditions.

a) *Standard for Renewal.* Section 309(k) of the Communications Act, which governs television broadcast license renewals, was adopted as part of the Telecommunications Act of 1996. Section 309(k)(1) requires the Commission to grant a renewal application if specified requirements are satisfied: "If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license –

(A) the station has served the public interest, convenience, and necessity;
 (B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and
 (C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.”⁷

- b) *Limited Authority to Deny or Condition a Renewal.* Only if the licensee fails to meet the standard of Section 309(k)(1), may the Commission deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁸
- c) *WWOR-TV Has Satisfied the Requirements Section 309(k)(1) for Renewal.* Since there can be no finding of a serious rule violation or rule violations amounting to a pattern of abuse, the FCC must find that WWOR-TV did not serve the public interest in order to impose conditions pursuant to Section 309(k)(2) – a standard that it simply cannot meet. As demonstrated above, WWOR-TV’s license is subject to no express conditions as to its programming to New Jersey. And quite apart from the question of whether it is subject to requirements applicable to no other television station, it is indisputable that WWOR-TV has provided exceptional service to northern New Jersey. Accordingly, imposition of special programming conditions on the grant of WWOR-TV’s pending renewal application would violate Section 309(k)(2) of the Communications Act.
- 4) Even if the Commission Had the Authority—Which It Does Not—to Impose Conditions on the Grant of WWOR-TV’s License Renewal, the FCC Must, if WWOR-TV Requests, Vacate Any Conditional Grant and Afford WWOR-TV a Full Evidentiary Hearing.
 - a) Under Section 1.110 of the Commission’s rules, if the FCC grants any application subject to terms or conditions other than those requested by the applicant, the applicant may reject the grant and request an evidentiary hearing before an administrative law judge.⁹ “Upon receipt of such request, the Commission will *vacate* its original action upon the application and set the application for hearing....”¹⁰ The hearing would be a trial-type and include introduction of oral and written testimony with full right of cross-examination.

⁷ 47 U.S.C. § 309(k)(1).

⁸ 47 U.S.C. § 309(k)(2).

⁹ 47 C.F.R. § 1.110.

¹⁰ *Id.* (emphasis supplied).

- b) An applicant may then request Commission review of the outcome of the hearing process¹¹ and appeal a final Commission decision imposing conditions to the United States Court of Appeals for the District of Columbia Circuit.¹² An applicant may also seek review of any court of appeals decision by filing a petition for writ of certiorari with the Supreme Court.
- 5) Subjective Review of a Broadcaster's Editorial Choices Is Not within the Purview of the Commission.
- a) The First Amendment and Section 326 of the Communications Act prohibit the Commission from interfering with broadcasters' free speech rights or improperly interfering with the programming decisions of licensees.¹³
- b) The Supreme Court has recognized the degree to which Congress has directed the Commission to steer clear of oversight of broadcast news— "Congress intended to permit private broadcasting to develop with the widest journalistic freedom," and – since it is not physically possible to provide time for all viewpoints – "the right to exercise editorial judgment was granted to the broadcaster."¹⁴
- c) The Commission itself has stated that, "the general rule is that the Commission [will] not sit to review the broadcaster's news judgment, the quality of his news and public affairs reporting, or his taste."¹⁵
- 6) The Commission Has No Basis to Make Quantitative Judgments About WWOR-TV's Programming
- a) The Commission long-ago eliminated its quantitative guidelines for non-entertainment, local and informational programming. Prior to its 1984 deregulation order, the Commission maintained renewal application processing guidelines specifying the amount of non-entertainment programming that television stations were required to broadcast to ensure

¹¹ 47 C.F.R. § 1.115(a).

¹² See 47 U.S.C. § 402(b)(2); *Tribune Co. v. FCC*, 133 F.3d 61, 66 (D.C. Cir. 1998) ("[W]hen the Commission grants an application subject to some condition which the applicant did not request, the application has been denied for purposes of § 402(b).").

¹³ See 47 U.S.C. § 326. See also, *In re John Neely, Esq.*, 2007 WL 1246137 (2007) (finding that "the Commission will not take adverse action on a license renewal application based on subjective determination of a listener or group of listeners as to what constitutes appropriate programming").

¹⁴ *Columbia Broadcasting System v. Democratic National Committee, et.al.*, 412 U.S. 94, 110-11 (1973).

¹⁵ *In re Complaints Concerning Network Coverage of the Democratic National Convention*, 16 FCC 2d 650, 654 (1969).

routine processing of their renewal application and avoid additional review.¹⁶ The Commission ultimately concluded that the processing guidelines imposed burdensome compliance costs and raised potential First Amendment concerns by unnecessarily infringing on the editorial discretion of broadcasters.¹⁷

- b) FTS has clearly demonstrated that it has provided programming responsive to issues of concern to viewers in northern New Jersey. Moreover, WWOR-TV **has provided** more local news on average than other similarly ranked commercial television stations in the United States and **has carried** more local news and public affairs programming than other full power stations licensed in New Jersey.
- i) A brief review of the programming of local New Jersey stations reveals that, on average, WWOR-TV **broadcast** over 8.0 hours of local news and public affairs programming per week. Other full-power commercial stations licensed in New Jersey broadcast less than 3.0 hours of local news and public affairs programming per week.
- ii) WWOR-TV **carried** significantly more news than other similarly situated stations. Nationally, over 60 percent of stations ranked fifth or below in a market provide no local news at all.¹⁸ The FCC's own 2005 study reveals that the remaining 40 percent of stations ranked fifth and below averaged 458 minutes over a two week period.¹⁹ In contrast, WWOR-TV, which is ranked sixth in the DMA, **provided** over 850 minutes of local news over any given two week period **during the license term.**

¹⁶ *Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations*, 98 FCC 2d 1076 (1984) ("TV Deregulation Order").

¹⁷ *TV Deregulation Order*, at ¶¶ 8, 27.

¹⁸ *See 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, MB Docket No. 06-121, FCC 07-216 (Released Feb. 4, 2008), at ¶ 62, n.204 ("Quadrennial Review Order").

¹⁹ *Quadrennial Review Order*, at ¶ 62, n.204.

EXHIBIT D

DECLARATION

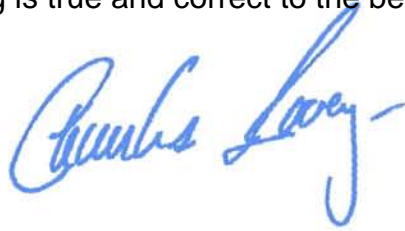
I, Charles Lovey, hereby state as follows:

- 1) I am a member of Voice for New Jersey (VNJ). I make this Declaration in connection with a letter from Voice for New Jersey to Chairman Julius Genachowski of the Federal Communications Commission. This letter responds to certain matters raised in a letter dated January 5, 2010, which was submitted by counsel to Fox Television Stations, Inc. in the matter of VNJ 's Petition to Deny the renewal of the broadcast license for WWOR-TV.
- 2) During late-October through mid-November, 2009, I observed that WWOR-TV's news anchor, Harry Martin, was absent from a number of the station's newscasts. During this same period, I noticed that Mr. Martin was reporting on WWOR-TV' s "sister station," WNYW-TV.
- 3) On the afternoon November 4, 2009, during normal business hours, I visited the headquarters offices of WWOR-TV in Secaucus, NJ. The purpose of this visit was to inspect the station's public file.
- 4) At the time of my visit, the building looked to be nearly deserted. The vast majority of the offices were dark, and I observed no more than six people (including two security guards) during my two-hour visit.
- 5) During my visit, I asked to inspect the station's public records file. I was escorted into the room where the files were maintained by a WWOR-TV employee. I commented on the many dark offices and apparent lack of staff, and was told that a significant number of the station's employees split their time with WWOR-TV's Manhattan-based sister station, WNYW-TV, and were working in New York.
- 6) During this conversation, I was also told that the only programming being produced at WWOR-TV was the station's half-hour weekday newscast and its weekly half-hour public affairs program.
- 7) I inspected WWOR-TV's issues and programming reports and its public comment files for the most recent 12 months. With respect to the public comment files, I focused particular attention on the months of July, August, and September of 2009--the month during which the station reduced its schedule of news and public affairs programming, and the two months thereafter.
- 8) The public comment files were segregated monthly, and were broken down into sections relating to programming and non-programming related comments. Copies of letters and email correspondence were retained. These comments were classified and were noted on a summary sheet,

which also made note of telephone comments. The summary sheets listed comments for both WWOR-TV and its sister station WNYW-TV, and bore both stations' logos. The vast majority of the comments categorized in the summary sheets related to WNYW-TV's programming.

- 9) At the time of our review, the files showed only one public comment related to WWOR-TV's programming for the months of July, August, and September, 2009. The comment related to a WWE Smackdown broadcast. There were only a handful of non-programming related comments directed at WWOR-TV in this same three month period.
- 10) I found it very curious that the significant changes to WWOR-TV's news and public affairs programming did not give rise to any public comment. I asked the employee who had assisted me to have the station's management contact me to discuss the matter.
- 11) On or about November 5, 2009, I received a phone message from an individual who identified herself as Audrey Pass. In her message, Ms. Pass stated that she was WWOR-TV's Senior Director of Communications and Public Affairs, and that my inquiry had been referred to her. She advised that she was looking into the issue and provided her telephone contact information.
- 12) Shortly thereafter, I spoke by telephone with Ms. Pass. She advised that four programming-related emails were received during July, August, and September of 2009, but that they had mistakenly been misfiled with the prior year's public comments. She stated that three of the comments addressed the change in the news schedule from 10:00PM to 11:00PM on weekday evenings (two positive and one negative), and that the other comment was unrelated to news or public affairs programming.
- 13) Shortly after receiving the original telephone message from Ms. Pass, I attempted to contact her through the main telephone number at WWOR-TV's headquarters. The phone was answered via recording, and (after repeated callbacks) I was unable to reach a live person when selecting the main extensions for the station's sales, public affairs, viewer services, or engineering departments. When I was able to get through on the station's DTV information line, the call was forwarded to WNYW in New York.
- 14) Sometime after the telephone conversation with Ms. Pass, Voice for New Jersey was contacted by an individual identifying himself as a WWOR employee. In a telephone conversation, this individual expressed concern about the station's level of service. He advised of massive cutbacks in the station's technical and production staff. We were told that WWOR's production staff was reduced by more than 50% through a combination of layoffs, buyouts, and transfers to WNYW-TV,

I hereby swear that the foregoing is true and correct to the best of my knowledge, information and belief.

A handwritten signature in blue ink, appearing to read "Charles Lovey", with a stylized flourish at the end.

Date: February 15, 2010

By: Charles Lovey
Member, Voice for New Jersey